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CONSIDERATION OF REPORTS SUBMITTED BY STATES
PARTIES UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1989

Addendum

LUXEMBOURG*

[23 July 1991]

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* For the initial report submitted by the Government of Luxembourg, see document CCPR/C/31/Add.2; for its consideration by the Committee, see documents CCPR/C/SR.628, SR.629 and SR.632, as well as the Official Records of the General Assembly, Forty-first session, Supplement No. 40 (A/41/40), paras. 47 to 100.

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INFORMATION RELATING TO ARTICLES 1 TO 27 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS*

Article 1

1. The Constitution of Luxembourg has recently been amended, although the amendments have not affected the political system of the Grand Duchy.

Article 2

2. In order to underscore the importance attached to the principle of equality and non-discrimination, a number of recent laws contain specific provisions whose purpose is to reiterate the prohibition against any departure from the principle of equality. This is the case, in particular, of the Grand Ducal Regulation of 24 March 1989 concerning the administration and internal regime of prison establishments, article 178 of which specifically stipulates that, in the treatment of prisoners, no distinction shall be made on grounds of race, colour, sex, language, religion, political or any other opinion, national or social origin, wealth, birth or any other circumstances, and that the religious beliefs and moral principles of the group to which the detainee belongs are to be respected.

3. As regards article 2, paragraph 3 (a), the Act adopted on 1 September 1988 relating to the civil liability of the State and of public bodies, establishes the principle that the State and other legal persons under public law are responsible, each within the purview of its public service mission, for any damage caused by an error of their services, whether administrative or judicial, subject to force of res judicata. Moreover, if it would be inequitable, in the light of the nature and the purpose of the act whereby the damage was caused, to allow the consequences of the injury to be borne by the citizen compensation is due even if there is no proof of any error on the part of the service, provided the injury is specific and not attributable to a fault of the victim.

4. With regard to article 2, paragraph 3 (c), the Act of 25 February 1986 concerning the enforcement of decisions taken by the litigation committee of the Council of State, has generalized the possibility for interested parties to appeal to a special commissioner to have the Council of State's decisions enforced, if the competent administrative authority to which the Council of State has transferred the matter fails to act in accordance therewith.

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* The general part of the report of Luxembourg will appear in the basic document drawn up in accordance with the consolidated guidelines for the initial part of the reports of States parties (HRI/1991/1). This basic document will be prepared after the present part of the report relating to each of the articles of the Covenant has been submitted.

Article 3

5. On 27 February 1989, Luxembourg approved Protocol No. 7, dated 22 November 1984, to the Convention for the Protection of Human Rights and Fundamental Freedoms, article 5 of which provides that spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution.

6. In addition, by the Act of 15 December 1988, the Grand Duchy approved the Convention on the Elimination of All Forms of Discrimination against Women, adopted in New York on 18 December 1979.

Article 6

7. On 8 August 1985, an act providing for the punishment of genocide was introduced into Luxembourg law.

Article 7

8. The Act of 9 January 1985, relating to the punishment of serious breaches of the Geneva Conventions of 12 August 1949, classifies as international crimes and severely sanctions certain violations of individual and property rights protected by the Geneva Conventions of 12 August 1949, and in particular homicide, torture or inhuman treatment, including biological experiments and wilfully causing serious suffering or violating physical integrity or health.

9. On 31 July 1987, Luxembourg approved the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of 10 December 1984.

10. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, signed at Strasbourg on 26 November 1987, was approved by the Act of 22 June 1988. Under this Convention, a European committee against torture was set up to periodically visit member States to examine the treatment of persons deprived of freedom in order to enhance if necessary, their protection against torture and inhuman or degrading treatment or punishment. Subsequently, liaison officers were appointed in all establishments in which persons may be deprived of their freedom by any Luxembourg authority.

11. Article 179 of the Grand Ducal Regulation of 24 March 1989, relating to the administration and internal regime of prison establishments stipulates that order and discipline must be firmly enforced, but without more restrictions than are necessary to maintain security and orderly community life. Any violence or assault against detainees is prohibited; only such force as is strictly necessary to maintain order is authorized, although it must be reported in writing, without delay, to the head warder. Article 180 strictly prohibits any punitive use of means of constraint such as handcuffs or straightjackets.

12. Any detainee may make a request or complaint to the prison Governor, who is required to carry out an investigation and to take a decision within a reasonable period and without undue delay. If the detainee is dissatisfied with the decision, he may appeal to the public prosecutor, who is also required to carry out an investigation and to take a substantiated decision as quickly as possible. A detainee may also ask to be heard by the public prosecutor without any member of the establishment's personnel being present during the regular inspection of the establishment required by article 24 of the Grand Ducal Regulation.

13. Lastly, article 215 stipulates that any detainee may at any time make a request or a complaint to the Head of State, the Chamber of Deputies, the public prosecutor or the judicial authorities. Such requests and complaints may be submitted in a sealed envelope, so that there is no possibility of them being inspected. The Regulation also stipulates that the right to submit requests, complaints or appeals mentioned above must in no way be hindered by any member of the prison administration. Detainees who are illiterate or have a physical or mental handicap that might prevent them from exercising this right must be helped to do so. The exchange of correspondence mentioned above, as well as correspondence between the detainee and his counsel or the diplomatic and consular authorities is allowed at all times, unless the examining magistrate has issued a ban on communication, in which case only correspondence between the detainee and his counsel is allowed, although such correspondence may not be subject to inspection.

14. As regards the right of the criminal investigation service to detain, for the purposes of identification, a person who is the subject of a search warrant issued by a judicial or administrative authority, or in respect of whom there is sufficient evidence to link him or her with an offence, under the provisions of article 45 of the abovementioned Act of 16 June 1989, the safeguards are provided against any danger of abuse of police authority.

15. The Act of 26 May 1988 relating to the internment of mentally-ill persons in closed psychiatric establishments or departments contains an article which in particular stipulates that any treatment that is not yet generally accepted by medical science, or that entails a serious risk of irreversible brain damage, or of damage to the patient's personality may be administered only if the doctor considers it vital and if the patient gives his express consent, after having been duly informed. If the patient is incapable of appreciating the implications of the treatment, the doctor must submit the matter to a committee of three experts, two of whom must be doctors. Clinical tests of products or of medical techniques which do not have a psycho-therapeutic purpose are strictly prohibited by law. Even those which are psycho-therapeutic require prior approval from the Minister of Health, after consultation with medical council. Breaches of these provisions are treated as criminal offences.

Article 9

16. The Acts of 16 June and 7 July 1989 amended the provisions of the Code of Criminal Investigation, while preserving those rules that safeguarded the interests of persons arrested and adding further guarantees. For example, under the Act of 7 July 1989, if the judges in chambers of the circuit court

or of the court of appeal have not decided whether to bring charges within one month of the date of the first examination, the government procurator or the public prosecutor orders the suspect's immediate release, unless the chambers in question declare, in a substantiated and unanimous decision, adopted after having heard the government procurator, that it is necessary to prolong the detention for specific reasons. The procedure is repeated at the end of each month if the judges in chambers still have not decided whether to bring charges.

17. In the light of the provisions relating to pre-trial detention contained in the Convention for the Protection of Human Rights and Fundamental Freedoms, the Luxembourg courts require such detention not to be disproportionate to the nature of the offence and the likely penalty.

18. As regards the system of protection for mentally disturbed persons, the Act of 26 May 1988 governing their internment in closed psychiatric establishments or units brought about an overall reform based on the principle that mentally disturbed persons must in so far as possible be treated in their home environment. They may be interned in a closed psychiatric establishment or unit only if they represent a danger to themselves or to others on account of serious psychiatric disturbance. The Act lays down strict conditions for internment. The decision to intern the person must be adopted, once it has been ascertained that these conditions have been complied with, by the president of the court of the judicial circuit in which the establishment is located, or by his appointee.

19. Throughout internment, this judge is required to ascertain that the conditions relating to internees laid down by the Act are complied with. If he observes any failure to do so, he may at any time issue a warning to the attending physician or to the monitoring committee established by the Act, to either ensure that the conditions are complied with or order the patient's release. A monitoring committee, established by article 17 of the Act, is responsible for deciding whether to prolong the confinement for more than one year. The patient or any other person concerned may at any time apply to the court for release.

20. Similarly, confinement of a mentally disturbed person to his home requires authorization from the guardianship magistrate of the circuit in which the person is to be confined, and the confinement is subject to regular inspection by the magistrate or by the government procurator. Correspondence between the patient and private individuals or administrative or judicial authorities may under no circumstances be withheld.

21. An official responsible for informing and advising patients of their rights is appointed to each establishment by the procurator. Failure to comply with the legal requirements is a criminal offence.

22. Regarding the protection of youth, the Act of 12 November 1971 in principle extends the provisions relating to criminal prosecution to proceedings before the juvenile court or the juvenile magistrate, who are required to adopt, in those cases specified by the Act, custodial or supervisory measures in respect of juveniles. The Act contains a number of exemptions, which are necessary in order to safeguard specific interests of

minors. It is worth noting that a bill on the protection of youth, pending before the Chamber of Deputies, is intended to round out these provisions by allowing greater consideration to be given to juvenile offenders' requests to benefit from one of the special educational or special guardianship measures.

Article 10

23. The Grand Ducal Regulation of 24 March 1989 regarding the administration and internal regime of prison establishments incorporates and develops the provisions of the previous Regulation of 3 December 1970, that already guaranteed respect for the dignity of detainees and humane treatment for them. It establishes different regimes for persons awaiting trial and convicted prisoners, and in general stipulates that persons awaiting trial are in so far as possible to be kept separate from convicted prisoners and that they must in no case be brought into contact with convicted prisoners against their will.

24. Minors held in a prison establishment are subject to an appropriate regime. Those held in pre-trial detention in a local prison receive special attention from the warden and a daily visit from him or from a representative duly authorized by the magistrate dealing with the case. The warden is required to employ every means compatible with the requirements of security to alleviate the duress of pre-trial detention. Juveniles held in a place of detention as a disciplinary measure are subject to a special regime, which includes an important educational component and which, in so far as possible, shields them from the harmful influence of other detainees and from idleness.

25. The Regulation also contains forceful measures designed to orient the prison system towards social rehabilitation by allowing detainees to work and acquire new skills or to participate in organized and group recreational activities. The desire to promote the social rehabilitation of convicts also characterizes the Act of 26 July 1986 relating to specific methods of enforcing custodial sentences.

26. Lastly, by an act dated 31 July 1987, the Grand Duchy also approved the Convention of 21 March 1983 on the transfer of convicts.

Articles 11 and 12

27. The rights codified in articles 11 and 12 are protected by the Constitution of Luxembourg.

Article 13

28. This right is incorporated into article 1 of Protocol No. 7 to the Convention for the Protection of Human rights and Fundamental Freedoms. Under Luxembourg law, an alien may be refused permission to settle in the Grand Duchy, or his alien's identity card (equivalent to a permanent residence permit) withdrawn and its renewal refused if he fails to fulfil his legal obligations towards his family. Abandoning one's family is a criminal offence in the Grand Duchy and the Penal Code lays down prison sentences for any parent who fails to fulfil all or part of his legal obligations regarding

maintenance for his children, whether he has refused to fulfil them despite being able to do so or because he is unable to do so by a fault of his own. The same applies to the mutual obligations of spouses, as well as to those of adoptive parents towards their adopted children and to the obligations of any other person who fails to provide such maintenance as he or she is required to provide by virtue of an irrevocable or a provisionally enforceable decision, or of an agreement made between spouses as part of a divorce by mutual consent or of a divorce awarded by a court which calls for maintenance to be paid to one of the spouses by the spouse at fault.

Article 14

29. The widespread application of article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms by the various courts, was followed by the adoption of the Act of 16 June 1989, amending Book 1 of the Code of Criminal Investigation and a number of other legal provisions, and prohibiting an examining magistrate under pain of nullity, from judging a case which he has examined. The same prohibition applies to magistrates who, as members of the judge's council chamber of the circuit or appeal court, have previously ordered a case's transfer to a court hearing its merits or taken a decision regarding the suspect's release, and to officials of the public prosecutor's office appointed to the position of magistrate or appeal court judge who have previously made or been instrumental in the making of submissions or applications in respect of the case. It should be pointed out that the safeguards afforded the suspect, which were previously laid down in the special Act on Adversarial Examination of 19 November 1929, have now been incorporated into the Code of Criminal Examination.

30. The rights contained in paragraphs 5, 6 and 7 have also been incorporated into Protocol No. 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Act of 17 June 1987 which abolished the Court of Assize and amended the jurisdiction and procedure for examining and judging minor offences, established criminal divisions within the circuit courts, whose decisions are open to appeal before the criminal division of the court of appeal, in order fully to comply with the requirements of the principle of two levels of jurisdiction. The Act also established the general conditions under which criminal information may be reused in respect of new charges (new articles 135 to 136 of the Code of Criminal Investigation) and generalized application of the principle that a person who has been lawfully acquitted may not be tried again for the same offence, even if the offence is reclassified.

Articles 15 and 16

31. The rights codified in articles 15 and 16 are protected by the Constitution of Luxembourg.

Article 17

32. The Act of 26 July 1986, which abrogated the provisions of the previous act on conditional sentencing and the system of probation, also introduced into Luxembourg's Code of Criminal Investigation a chapter concerning, in particular, suspension of the pronouncement of criminal sentences and

probationary suspension of the enforcement of penalties whereby accused or convicted persons are required to comply with supervisory and assistance measures for their social rehabilitation. They must also observe certain conditions which may be specially imposed on them by a decision of the judge. However, the Code of Criminal Investigation specifically provides that such measures and obligations may not infringe the freedom of opinion or religious or political convictions of those subject to them. Enforcement of these measures and obligations is supervised by the public prosecutor, assisted by officials of the central social welfare service.

33. Four supervisory measures are prescribed: (a) Probationers must comply with the attendance notices sent by the public prosecutor or officials of the central social welfare service; (b) they must accept visits by the officials of the social welfare service and provide them with information or documents to allow them to ascertain their means of subsistence; (c) they must explain any change of employment or address; (d) they must inform the central social welfare service in advance of any change of address. In addition to these supervisory measures, assistance measures are taken in order to promote and support efforts made by the probationer to reintegrate himself within society and in particular into family and working life. They take the form of guidance, and if necessary material assistance provided by the central social welfare service or, at the request of this service department, by any social welfare or assistance organization.

Articles 18, 19, 20 and 21

34. The rights codified in articles 18, 19, 20 and 21 are protected by the Constitution of Luxembourg.

Article 22

35. Article 26 of the Constitution of Luxembourg was amended by the Constitutional amendment of 13 June 1989 and now states that "Luxembourgers have the right of association. This right may not be made subject to any prior authorization". As a result, the prior authorization required by the former article 26 to establish any religious bodies in the Grand Duchy has been abolished and there are no longer any restrictions on the establishment of such bodies. Ministers of religion are treated as State officials for the purposes of remuneration, pursuant to the provisions of the Act of 22 June 1963 which established the system of remuneration of State officials.

Article 23

36. The Act of 11 December 1986 amended the conditions established by the Act of 22 February 1968 for the granting of Luxembourg nationality, and abolished inequality between men and women in that respect. Nationality is now transmitted both by the father and by the mother. The requirements for obtaining Luxembourg nationality are identical for men and women. Full equality between spouses is now guaranteed in this area.

Article 24

37. In connection with paragraph 1 of this article, the Act of 16 May 1986 should be mentioned. This Act approved the Convention on the Civil Aspects of International Child Abduction, adopted at The Hague on 25 October 1980, which is designed to protect children against the harmful consequences of abduction by one parent if their family breaks up.

38. With regard to paragraph 3, the Act of 11 December 1986 amended the provisions relating to the granting of Luxembourg nationality as follows:

"The following are Luxembourg nationals:

1. Children born, even in a foreign country, of a Luxembourg parent, provided the child's filiation is established before he reaches the age of 18, and provided the parent is of Luxembourg nationality at the time when the filiation is established; if the decision on filiation is not issued until after the death of the father or mother, the child shall have Luxembourg nationality if the parent was of Luxembourg nationality on the date of his or her death;

2. A child born in the Grand Duchy of parents unknown to the law;

a foundling discovered in the Grand Duchy is presumed, unless there is proof to the contrary, to have been born on Luxembourg soil;

3. A child born in the Grand Duchy and who possesses no other nationality.

The following are also granted Luxembourg nationality:

1. A child adopted by a national of Luxembourg (absolute adoption);

2. A child aged under 18 adopted by a national of Luxembourg, who is stateless or who loses his or her nationality of origin under the effect of foreign law as a result of the adoption (simple adoption);

A child aged under 18 whose parent acting as his guardian in accordance with the law voluntarily acquires or recovers the status of a Luxembourg national.

Persons born in the Grand Duchy before 1 January 1891 are entitled to Luxembourg nationality by birth.

Luxembourg nationality by birth is also established by the production of proof that the parent of the applicant whose nationality determines that of the applicant possesses Luxembourg nationality by birth. Proof to the contrary is admissible. Luxembourg nationality is acquired by exercising the rights vested therein.

In addition, a child may opt to acquire Luxembourg nationality by choice if he is aged between 18 and 25 and provided his usual place of residence was in the Grand Duchy during the year preceding the declaration of option and provided he has lived there for at least five consecutive years:

1. If he was born in the country of a foreign parent;

2. If he was born abroad of a parent possessing Luxembourg nationality by birth;

3. If he was born abroad of a foreign parent and has attended school in the Grand Duchy for the whole of his compulsory schooling;

4. If he has been adopted (simple adoption) by a Luxembourger and has not, at the time, lost his nationality of origin."

Article 25

39. The Act of 9 June 1989 which amended a number of legal provisions relating to the withdrawal of the right to vote and to stand for election considerably reduced the grounds for exclusion from the electoral roll laid down by Luxembourg's electoral law, which now makes provision only for the following three cases:

(a) Convicted criminals;

(b) Persons who, on conviction in correctional cases, are deprived of their right to vote;

(c) Adults under tutorship.

40. Under the Communal Act of 13 December 1988, special consultative commissions were set up in communes where more than 20 per cent of the population are foreigners, to look after the interests of foreign residents in communal matters, and in particular to ensure foreigners participate in communal life, by proposing to the communal authorities appropriate solutions to the specific problems encountered by foreigners and their families in integrating into the local population, promoting mutual understanding between Luxembourgers and foreigners and facilitating administrative relations between foreigners and the communal authorities. They are governed by the Grand Ducal Regulation of 5 August 1989 on the organization and operation of the consultative communal commissions for foreigners.

41. Also in connection with paragraph (a) of article 25, it should be mentioned that the new communal act extended the grounds for a referendum to matters of communal interest; the organization of the referendum is governed by the Grand Ducal Regulation of 18 October 1989 setting out the procedures for the referendum as provided for by article 35 of the Communal Act of 13 December 1988.

Article 26

42. A number of recent acts contain special provisions prohibiting discrimination. This issue has in fact already been dealt with in connection with article 2. Nevertheless, it is worth mentioning again the Act of 26 May 1988 relating to the internment of mentally disturbed persons in closed psychiatric establishments or units, which stipulates that during hospitalization patients are entitled to suitable medical treatment, based on an individual treatment plan and designed to ensure their social rehabilitation. Such treatment must respect the patient's freedom of opinion and religious or philosophical convictions, while benefiting his physical health, and as far as possible, contacts with his family and society as well as his cultural development.

Article 27

43. The rights codified in article 27 are protected by the Constitution of Luxembourg.